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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,935	10/31/2003	Laura Niederhofer		8936
40985	7590	04/20/2004		
LAURA S. NIEDERHOFER 1720 LOHAVEN DRIVE WOODBURY, MN 55125			EXAMINER VANATTA, AMY B	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/697,935	<b>Applicant(s)</b> NIEDERHOFER, LAURA	
	<b>Examiner</b> Amy B. Vanatta	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10312003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4, 6, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites "the flexible, durable material" without proper antecedent basis.

Claim 6 recites "the loop fold" without antecedent basis.

Claim 10 recites "the detachable infant toys" and "the secured toys" without antecedent basis.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-6, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hill (US 2,442,895).

Hill discloses an apron, which forms a "bib" as claimed. The garment includes a body (1) made of flexible fabric (col. 1, lines 42-44; col. 1, line 52 thru col. 2, line 1), a

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means for attaching the body around the wearer's neck (1c,1d), and a means for attaching the body around the wearer's torso (4). The garment includes loops (2,3) each loop having two ends secured to the body as claimed. The loops are made of strips of fabric (col. 1, lines 42-43), which is "cloth material" as in claim 4. The two ends of the loops are securing by sewing (col. 1, line 49), as in claim 5. The ends of the loops are secured adjacent to each other to form a loop fold. The loop fold of at least one of the loops (see loop 2) is shown oriented downwards in Fig. 2, as in claim 6. Strap 4 is a detachable device which is attached to at least one of the loops as in claim 8. Regarding claim 10, the fabric of the apron is inherently capable of being washed in some manner, thus being "washable". The loops 2,3 have two ends secured to the body adjacent one another. Loop 2 clearly hangs down when the garment is donned, as shown in Fig. 2. It is noted that whether the loops 3 are hanging down, sideways, etc. is based on the orientation of the garment. When the strap 4 is not attached to loops 3, for example before the garment is totally put on and secured, or when the garment is about to be removed, the flaps 1a would fall downwards due to gravity, and when the flaps 1a are thus positioned, the loops 3 may be said to be "hanging down" to the extent recited in claim 10. Also, the loops 3 would be oriented such that they are "hanging down" at other times, such as when the garment is not on a wearer. The loops 2,3 are made of material which is strong enough and secured well enough to the bib body to withstand tugging on the loops by strap 4 during wear and during tightening of the strap 4 when donning the garment. Thus, the material is clearly strong enough and is secured well enough to the bib to withstand the forces put on the loops during normal

attachment and detachment of toys to the loops, to withstand playing with such toys and to withstand normal cleaning of the bib.

Although Hill does not disclose the use of the garment on an infant, and does not disclose the use of the loops to hold detachable infant toys, such recitations amount to the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

5. Claims 1, 2, 4, 7, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Williamson (US 5,566,391).

Williamson discloses an apron, which forms a "bib" as claimed. The garment includes a body (12) made of flexible fabric (see col. 2, line 25, which discloses canvas), a means for attaching the body around the wearer's neck (15a), and a means for attaching the body around the wearer's torso (15b, 15c). The garment includes loops (16, 20, 30) each loop having two ends secured to the body as claimed. The loops are made of strips of cloth (col. 3, lines 11), as in claim 4. The two ends of at least one of the one or more loops are secured apart from each other (see, e.g., loop 30).

Williamson discloses at least one detachable device (18, 22, 31) which is attached to at least one of the loops as in claim 8. Regarding claim 10, the fabric of the apron is washable, since canvas is washable (col. 2, line 25). The loops (20, 16) have two ends secured to the body adjacent one another. The loops "hang down" to the extent

claimed, since they hang away from the surface of the sheet 12 a sufficient distance such that items 22,18 can be inserted therein. It is noted that whether the loops are hanging down, sideways, etc. is based on the orientation of the garment. For example, when paint cans are not positioned within the loops 18,20 and the wearer bends over at the waist, the loops hang down as claimed. Also, the loops would be oriented such that they are "hanging down" at other times, such as when the garment is not on a wearer. The loops are made of material which is strong enough and secured well enough to the bib body to hold heavy items, such as paint cans. Thus, the material is clearly strong enough and is secured well enough to the bib to withstand the forces put on the loops during normal attachment and detachment of toys to the loops, to withstand playing with such toys and to withstand normal cleaning of the bib.

Although Wiliamson does not disclose the use of the garment on an infant, and does not disclose the use of the loops to hold detachable infant toys, such recitations amount to the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

6. Claims 1-3, 6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 2002/0029400).

Smith discloses an apron, which forms a "bib" as claimed. The garment includes a body made of flexible fabric (see paragraph 0016, which discloses denim), a means

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for attaching the body around the wearer's neck (12,14; paragraph 0030), and a means for attaching the body around the wearer's torso (60,160). The garment includes loops on strip 26 which are part of a hook and loop fastener (paragraph 0019). The loops of a hook and loop fastener are inherently attached to the base of the fastener strip with the two ends of the loop adjacent one another, so that the loop is closed and can be attached to the mating hooks. The loops of the hook and loop fastener are inherently less than 0.50 inches in cross sectional dimension and are of durable material, as in claim 3. Smith discloses at least one detachable device (27a, 27b, 27c, 27d)) which is attached to at least one of the loops as in claim 8. The devices 27a-27d are infant toys to the extent claimed, since they are used to entertain or capture the attention of a child. At least one detachable infant toy (27a) is attached to at least one of the one of more loops (on strip 26) as in claim 9 (see paragraph 0019). Regarding claim 10, the fabric of the apron is washable, since denim is washable. Regarding the recitation in claims 6 and 10 that the loops "hang down", the loops on strip 26 do hang away from the surface of the strip a sufficient distance such that the mating hooks can be inserted therein. It is noted that whether the loops are hanging down, sideways, etc. is based on the orientation of the garment. For example, when a wearer of the garment bends over at the waist, the loops "hang down" as claimed. Also, the loops would be oriented such that they are "hanging down" at other times, such as when the garment is not on a wearer. The loops are made of material which is strong enough and secured well enough to the bib body to withstand pulling forces associated with disengaging the mating hooks therefrom (i.e. to remove items 27a-27d). Since it is disclosed that the

toys 27a-27d are removable, the material of the loops is strong enough and is secured well enough to the bib to withstand the forces put on the loops during normal attachment and detachment of toys to the loops, to withstand playing with such toys and to withstand normal cleaning of the bib.

7. Claims 1, 2, 4-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bronson (US 5,815,834).

Bronson discloses a vest, which forms a "bib" as claimed. The garment includes a body made of flexible fabric (col. 2, lines 9-10), a means for attaching the body around the wearer's neck (straps with fasteners 4,4a), and a means for attaching the body around the wearer's torso (the waistband shown in Figs. 1-2). The garment includes loop 2 which forms the claimed "one or more loops". The garment also includes a loop formed by strap 18 (see Fig. 6). The loops (2,18) have two ends secured to the body as claimed. The loop (18) is made of a strip of cloth material, as in claim 4 (col. 2, lines 52-53). The two ends of the loop 2 are secured to the garment by sewing (col. 2, line 11), as in claim 5. The two ends of at least one of the loops (2) are secured adjacent each other with the loop fold oriented downwards as in claim 6 (see Fig. 1). The two ends of at least one of the loops (18) are secured apart from each other as in claim 7 (see Fig. 6).

Regarding claim 10, the fabric of the apron is inherently capable of being washed in some manner, and thus is "washable" to the extent claimed. The garment has a plurality of loops (2 and 18). Loop 2 has two ends secured to the body adjacent to each



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other so that the loop hangs down. Loop 18 has two ends which are secured sufficiently adjacent one another that the loop hangs down, since the strap forming the loop is long. See Fig. 6, showing the loop formed by strap 18 as "hanging down" to the extent recited in claim 10. The loops are clearly made of material which is strong enough and is secured well enough to the bib to withstand the forces put on the loops during normal attachment and detachment of toys to the loops, to withstand playing with such toys and to withstand normal cleaning of the bib.

Although Bronson does not disclose the use of the loops to hold detachable infant toys, such recitations amount to the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bronson (US 5,815,834).

Bronson discloses a garment as claimed, including one or more loops which are made of a flexible, durable material (see loop 2). Bronson does not disclose the cross

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sectional dimension of the loop 2, however it is intended to be of a size which can be threaded through the loop of a pacifier. Thus, it appears to be of a size similar to that recited in claim 3. It would require only ordinary skill in the art to determine, through routine experimentation, the optimal range for the size of the loop 2, depending upon the sizes of the pacifiers which will be used with the loop. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the loop 2 in the garment of Bronson such that its maximum cross sectional dimension is less than about 0.50 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

### ***Conclusion***


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 703-308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Amy B. Vanatta  
Primary Examiner  
Art Unit 3765